

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

ROBERT HUMPLE,

Plaintiff,

v.

CIVIL ACTION NO. 2:10-cv-00082

JIM RUBENSTEIN, et al.,

Defendants.

**ORDER**

This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and has recommended that the court **DISMISS** the plaintiff's complaint [Docket 2] with prejudice for failure to state a claim and **DENY** the plaintiff's application to proceed without prepayment of fees or costs [Docket 1]. Neither party has filed objections to the Magistrate Judge's findings and recommendations.<sup>1</sup>

The failure to object to a magistrate judge's report may be deemed a waiver of appeal of the substance of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th

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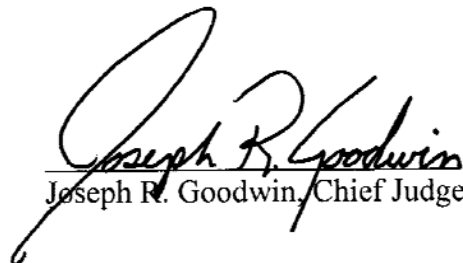
<sup>1</sup>The petitioner filed a "Statement of Claim: True to Facts" [Docket 11] on March 17, 2010. This does not appear to be objections to the Magistrate Judge's proposed findings and recommendation, as it simply restates the facts of the underlying claim. Even if we were to construe the "Statement of Claim" as objections, however, the allegations therein are without merit.

Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974). The court has reviewed the Magistrate Judge's findings of fact and recommendations and finds no clear error on the face of the record. Therefore, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and recommendations. The court **DISMISSES** the petitioner's complaint [Docket 2] with prejudice, and **DIRECTS** this action to be removed from the docket. The court also **DENIES** the petition to proceed without prepayment of costs and fees [Docket 1].

The court has additionally considered whether to grant a certificate of appealability. *See* 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2). The standard is satisfied only upon a showing that reasonable jurists would find that any assessment of the constitutional claims by this court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Rose v. Lee*, 252 F.3d 676, 683-84 (4th Cir. 2001). The court concludes that the governing standard is not satisfied in this instance. Accordingly, the court **DENIES** a certificate of appealability.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: April 1, 2010

  
Joseph R. Goodwin, Chief Judge